ment and demand of the money on behalf of the appellant. And it also appears that the appellee had information, by way of rumor, of the assignment before the attachment. We think *this* was all that was necessary for the protection of the appellee, and to maintain the title of the appellant to the money.

It was insisted by the argument of the counsel for the appellee, that it was the duty of the assignee, in order to perfect his title to this money, to give notice of the assignment, and to reduce the money to his possession within a reasonable time. "The notice was indispensable to charge the debtor with the duty of payment to the assignee, so that if, without notice, he paid the debt to the assignor, or it was recovered by process against him, he would be discharged from the debt." Story's Conflict of Laws, sec. 396. Further than this we do not think the notice was material in this case. The judgment of the Circuit Court is reversed, and the cause remanded for further proceedings according to law.

In the Supreme Court of Louisiana.

HENRIETTA TROWBRIDGE *vs.* C. T. CARLIN, HER HUSBAND.

C. T. CARLIN *vs.* HENRIETTA TROWBRIDGE, HIS WIFE.

1. Mutual insults and outrages, the fruit of mutual provocations, unless there be a palpable disproportion of guilt as between the parties, furnish no sufficient ground for divorce.
2. Disappointment in the marriage relation, and incompatibility of temper, are not causes for decreeing a judicial separation between husband and wife; but outrages and cruel treatment of a nature to render conjugal life intolerable, provided the complaining party is comparatively innocent, are sufficient to found a decree.
3. The texts of the civil law on this subject cited, and commented on.
4. The doctrine of the Canon law adopted in Louisiana.

The opinion of the court was delivered by

SPOFFORD, J.—If all the evidence which soils this record is to be credited, it proves great misconduct on the part of both spouses in

the mutual relation which both are trying to dissolve. Crimination and recrimination, blows, and words harder than blows, have succeeded their marriage vows of reciprocal forbearance, fidelity and love.

A little more than ten years ago, the appellee, then an elderly man with a fortune, married the appellant, a young girl without one.

The first that we hear of them is that they arrived on the husband's plantation, in the parish of St. Mary, "looking cross" at each other. Bickerings soon arose about the management of the household; favorite servants of the master were found disrespectful to their mistress, and had to be chastised, or sold. The lady had misunderstandings with the overseers, and they left. Abusive language, revolting to the ear of decency, is said by one of the overseers to have been uttered, in his presence, to the husband by the wife, apparently under the stings of jealousy. Two ladies testify that, in their presence, the husband upbraided his wife with being "of no account," saying "that she did not suit him, and that he was sorry he had ever married her." One of them deposes that he also traduced her family, and both say that to these reproaches she answered meekly and with tears. Notwithstanding occasional outbreaks and altercations of this sort, relieved, it would seem, by some placid intervals, time went on and three children were born of the marriage. Although each parent is proven to have been tenderly devoted to the children, these new ties do not appear to have drawn them closer to each other. Indeed, the displays of temper on both sides seem rather to have increased in intensity; and it is admitted that, on one occasion at least, the father resorted to violence to correct the mother of his children.

About a year before the present suits were brought, and nearly nine years after the marriage, the husband instituted an action for a separation of bed and board against his wife; but one of his overseers testified that he was persuaded to abandon it by her tears and promises of amendment. It was abandoned shortly after its institution.

At length, the present cross actions were brought on the same day, in which each spouse, after a glowing recital of grievances

suffered, and a careful suppression of grievances inflicted, claimed a judgment of separation against the other, with a right to the custody of the three children, which each party seems very solicitous to retain.

The district judge, expressing no doubt as to the truth of any of the testimony, concluded that the husband was the aggrieved party, and gave him a judgment of separation, with the custody of the children.

The wife has appealed.

Although the conduct of both parties appears to have been highly censurable, it is impossible to say, from the record before us, which was first or most in fault. Their errors were of a kindred character —ebullitions of temper, springing from disappointment, a spirit of retaliation; and a lack of self-control.

In a case like this, where the faults of the parties are so nearly balanced, and are of so similar a nature, the serious question arises, can either be heard in a court of justice to complain of the other? Should not the conduct of each toward the other close the mouths of both?

An affirmative answer to this question was given by one of the sages of the Roman law, treating, however, of the pecuniary interests of the spouses only: "Papinianus lib. XI. Quæstionum. Viro atque uxore mores invicem accusantibus, causam repudii dedisse utrumque pronuntiatum est? Id ita, accipi debet, ut eâ lege, quàm ambo contempserunt, neuter vindicetur; paria enim delicia mutuâ pensatione dissolvuntur." Dig. Lib. xxiv, Tit. iii, l. 39

The canon law adopted this principle of compensation, in refusing divorces where the parties were guilty of similar offences towards each other. Caus. 32, q. vi. Can. I.

Coquille and Domat seem to have recognized something like this rule as a part of the ancient French law.

Under the Napoleon Code two schools arose, which divided upon this question. Duranton T. ii., No. 574. Valette and Massol held that a demand for a separation is barred on either side, by mutual faults of the same description; in the language of M. Duranton, "la réciprocité des torts doit aussi, en général, produire une fin de non-

recevoir, surtout lorsqui'ils sont de même nature." On the other side, among those holding that where both parties have been guilty of mutual outrages and ill-treatment, both should have a decree of separation, must be classed the great names of Toullier, ii., 764, Marcadé, i., 769, M. Demolombe, iv., 415, and probably the weight both of doctrinal and judicial authority in the modern jurisprudence of France.

The district judge cited only the opinion of Toullier. But it must be remembered that this is a question of Louisiana law. Our code, our jurisprudence and our manners differ, in many respects, from those of France, although, to a considerable extent, derived from that source.

The doctrine of the canon law and of Duranton, on the point under consideration, appears to have been adopted at a very early period, and frequently enforced by our predecessors. In *Durand* vs. *Her husband*, 4 Martin, O. S. 174, it was held "that the law which provides for a separation from bed and board in certain cases, is made for the relief of the oppressed party, not for interfering in quarrels where both parties commit reciprocal excesses and outrages."

In *Pigneguy's case*, 9 Lou. 420, the wife's claim for a separation was rejected, although it was proved that her husband had used personal violence towards her on one occasion, the court remarking that the evidence gave color to the assertion that she provoked the ill-treatment by her violent temper.

In *Rowley's case*, 10 Lou., 571, the court said, the argument that after what had occurred between the parties it would be impossible for them to live together, was not a justification for a decree of separation.

In *Lalande* vs. *Jore*, 5 Ann. 33, a judgment of separation obtained by a wife for defamation by her husband, was reversed because the conduct of the wife had been marked by exasperation and violence towards her husband. *Durand's case* was cited with approbation, and also *Warring's case*, 2 Phillimore, 132; where it was intimated by an English court that, if the conduct of the party complaining had been outrageous, the remedy must first be sought in a reformation of conduct by the complainant.

And in *Naulet* vs. *Her husband*, 6 Ann. 403, where as in this case, both parties demanded a separation, and the district court granted it in favor of the husband, the judgment was reversed and both parties were turned out of court, because they were both in the wrong, having been guilty of reciprocal outrages.

To ascertain what is a just limitation upon the right of divorce is one of the most difficult of social problems. To fix this limitation is an attribute of sovereignty.

Under the law of Louisiana, as hitherto interpreted, disappointment in the marriage relation and mere incompatibility of temper are not causes for a judicial separation between husband and wife; excesses, outrages and cruel treatment of a nature to render the conjugal life intolerable are, but with this qualification, that the party complaining must be comparatively innocent of conduct similar to that complained of, in order to obtain a decree.[1] Mutual insults and outrages, the fruit of mutual provocations, unless there be a great and palpable disproportion of guilt as between the parties, furnish no sufficient ground of action to either.

This being the doctrine of the case heretofore adjudged in this State, we would not feel at liberty to disturb it, although it might conflict with our views of policy. But, notwithstanding the vigorous and able assaults that have recently been made upon this rule in France, and notwithstanding the inconveniences it may occasionally work, its manifest tendency is to induce greater circumspection in entering upon the most important of civil contracts, greater forbearance in undergoing the petty annoyances of domestic life, and a more general suppression of such scandalous scenes as it has been our painful duty to review in this cause.

I, therefore, concur in the decree dismissing both actions, at the appellees' costs.

[1] See Bishop on Marr. and Div., § 461, 2d ed.—*Eds. Am. L. R.*